# Wong Hon Leong David v Noorazman bin Adnan

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-02-34-1994
SHAIK DAUD, GOPAL SRI RAM AND VC GEORGE JJCA
28 SEPTEMBER 1995

***Contract*** *— Consideration — Promise of payment — Application of developer to convert and subdivide land — Aggrieved party promised to assist in obtaining approval of application — Developer promised to pay aggrieved party if approval obtained — Whether consideration existed — Whether executory consideration was good consideration — Contracts Act 1950 s 2(d) & (e)*

***Contract*** *— Illegality — Corruption — Charge of bribery — Promisor applied to convert and subdivide land — Promisee knew government officials who could expedite promisor's application — Promisor agreed to pay promisee if promisee assisted in obtaining approval — Whether convincing independent evidence needed to prove bribery — Whether agreement void because of illegality*

The appellant was one of the directors of Wealth Sdn Bhd ('the company') which owned three lots of agricultural land in Kajang ('the land'). As the company wanted to develop the land into a housing estate, it made an application to the land administrator for the district of Ulu Langat ('the land administrator') for conversion and sub-division of the land ('the application'). To expedite the matter, the appellant sought the assistance of the respondent who said that he knew the Menteri Besar of Selangor. The appellant agreed to pay a fee of RM268,888 ('the fee') for the respondent's services. On 28 January 1991, the respondent wrote a letter using the company's letterhead to the Menteri Besar, asking for assistance for an early approval of the application. The appellant later paid RM100,000 to the respondent when he produced the letter with the handwritten word 'Disokong' addressed to the land administrator and signed by the Menteri Besar. On 16 September 1992, the land administrator informed the company that its application had been approved. Subsequently, by a letter dated 17 December 1991, the respondent wrote to the appellant to confirm the agreement between them whereby he was to receive an additional fee of RM100,000 if he assisted in resolving the problem of access to the land through a piece of adjoining land. The required right of way was eventually obtained. The appellant, however, refused to pay the remaining fee of RM168,888 and the additional fee of RM100,000. The respondent brought summary proceedings against the appellant in the High Court for breach of contract. The appellant argued in his defence, inter alia, that: (i) there was no consideration for the alleged agreement; (ii) the respondent did nothing to earn his fee; and (iii) the agreement was void for illegality as the approval had already been granted at that point in time and the money was in fact a bribe. The judge rejected all the appellant's defences for not amounting to bona fide

triable issues, entered judgment for the sum of RM168,888, and granted unconditional leave to the appellant to defend in respect of the additional fee of RM100,000. The appellant has appealed to the Court of Appeal.

**Held**, dismissing the appeal:

(1) Section 2(e) of the Contracts Act 1950 ('the Act') provides that every promise and set of promises, forming the consideration for each other, is an agreement. In this case, the respondent promised that he would assist in obtaining the approval for the application. In return, the appellant promised to pay the respondent RM268,888 for that service. That consideration, namely the exchange of mutual promises, although executory, was a good consideration. Thus there was a binding agreement between the parties.

(2) The submission that the respondent did nothing to earn his fee was unmeritorious. The respondent had expended his exertions in securing the Menteri Besar's support for the company's application, and the application had in fact been approved. The respondent's actions came within the terms of s 2(d) of the Act which provides that when the promisee has done something at the desire of the promisor, such act is a consideration for the promise.

(3) The appellant's allegation that he was deceived by the respondent into believing that the approval would be granted when in fact it had already been granted was not supported by evidence. From the facts of the case, it was the appellant who asked the respondent for help. The respondent had obtained the approval of the application as promised and should receive the payment which had been agreed upon from the appellant.

(4) The charge of bribery is a serious allegation even in civil proceedings. It should not be lightly taken in the absence of convincing evidence and a solicitor who makes such a charge without foundation risks being disciplined for misconduct. In this case, the appellant had implied that the respondent was involved in bribing the chief executive of a state government, but there was no independent evidence to support this allegation.

**Obiter:**

Had the respondent filed a cross-appeal against the order of the judge granting unconditional leave to the appellant to defend in respect of the sum of RM100,000, the court may have entered final judgment for this sum. This was because the appellant had failed to make a prompt and vigorous reply to the respondent's letter dated 17 December 1991, to deny the agreement on the additional fee, as he should have.

A **[Bahasa Malaysia summary**

Perayu merupakan seorang daripada pengarah Wealth Sdn Bhd ('syarikat itu') yang memiliki tiga lot tanah pertanian di Kajang ('tanah itu'). Oleh kerana syarikat itu ingin memajukan tanah itu sebagai sebuah estet perumahan, ia telah membuat suatu permohonan B kepada pentadbir tanah untuk daerah Ulu Langat ('pentadbir tanah') untuk penukaran dan pemecahan lot tanah itu ('permohonan itu'). Untuk mempercepatkan perkara tersebut, perayu telah meminta pertolongan penentang yang mengatakan bahawa beliau kenal Menteri Besar Selangor. Perayu bersetuju untuk membayar fee sejumlah RM268,888 ('fee itu') untuk perkhidmatan penentang. Pada C 28 Januari 1991, penentang telah menulis sepucuk surat dengan menggunakan kepala surat syarikat itu kepada Menteri Besar, meminta pertolongannya untuk mendapat kelulusan awal permohonan itu. Perayu kemudiannya telah membayar RM100,000 kepada penentang apabila beliau mengemukakan kepada perayu surat tersebut dengan D perkataan tulisan tangan 'Disokong', yang dialamatkan kepada pentadbir tanah dan ditandatangani oleh Menteri Besar. Pada 16 September 1992, pentadbir tanah telah memaklumkan kepada syarikat itu bahawa permohonannya telah diluluskan. Seterusnya, melalui sepucuk surat bertarikh 17 Disember 1991, penentang telah menulis kepada perayu untuk mengesahkan perjanjian di antara E mereka di mana beliau akan menerima fee tambahan sebanyak RM100,000 jika beliau membantu untuk menyelesaikan masalah hak masuk ke tanah itu melalui suatu tanah yang bersebelahan. Hak lalu-lalang yang diperlukan tersebut telah didapatkan pada akhirnya. Walau bagaimanapun, perayu enggan membayar baki fee sejumlah F RM168,888 dan fee tambahan sebanyak RM100,000. Penentang membawa prosiding terus terhadap perayu di Mahkamah Tinggi atas kemungkiran kontrak. Perayu berhujah di dalam pembelaannya, antara lain, bahawa: (i) tidak terdapat balasan di dalam perjanjian yang dikatakan itu; (ii) penentang tidak melakukan apa-apa untuk mendapatkan feenya; dan (iii) perjanjian tersebut terbatal akibat G kepenyalahan undang-undang kerana kelulusan telahpun diberikan pada ketika itu dan wang itu sebenarnya adalah suatu sogokan. Hakim menolak kesemua pembelaan perayu kerana pembelaannya tidak merupakan isu bona fide yang boleh dibicarakan, mencatatkan penghakiman untuk jumlah RM168,888, dan memberikan kebenaran H tak bersyarat kepada perayu untuk membela dirinya terhadap fee tambahan sebanyak RM100,000 itu. Perayu telah membuat rayuan ke Mahakamah Rayuan.

**Diputuskan**, menolak rayuan itu:

I (1) Seksyen 2(e) Akta Kontrak 1950 ('Akta itu') memperuntukkan bahawa setiap janji dan pasang janji, yang membentuk balasan untuk satu sama lain, adalah suatu perjanjian. Di dalam kes ini, penentang telah berjanji bahawa beliau akan membantu dalam mendapatkan kelulusan untuk permohonan itu. Sebagai

balasannya, perayu berjanji untuk membayar penentang RM268,888 untuk perkhidmatan itu. Balasan yang berkenaan, iaitu pertukaran saling janji, walaupun eksekutori, adalah suatu balasan yang baik. Oleh itu, terdapat suatu perjanjian yang mengikat di antara pihak yang berkenaan.

(2) Hujah bahawa penentang tidak melakukan apa-apa untuk mendapatkan feenya adalah tidak bermerit. Penentang telah menggunakan pengaruhnya dalam mendapatkan sokongan Menteri Besar atas permohonan syarikat itu, dan permohonan itu pada hakikatnya telahpun diluluskan. Tindakan penentang adalah termasuk di dalam lingkungan s 2(d) Akta itu yang memperuntukkan bahawa apabila penerima janji telah melakukan sesuatu yang diingini oleh penjanji, tindakan tersebut adalah balasan untuk janji itu.

(3) Pengataan perayu bahawa beliau telah diperdaya oleh penentang supaya mempercayai bahawa kelulusan itu akan diberikan sedangkan ia telahpun diberikan, tidak disokong oleh keterangan. Daripada fakta kes ini, perayulah yang telah meminta penentang untuk pertolongan. Penentang telah mendapatkan kelulusan permohonan itu seperti yang dijanjikan dan patut menerima bayaran yang telah disetujui daripada perayu.

(4) Pertuduhan penyogokan adalah suatu pengataan yang serius walaupun di dalam prosiding sivil. Ia tidak harus diterima dengan mudahnya tanpa keterangan yang meyakinkan, dan seorang peguam yang membuat pertuduhan sedemikian tanpa asas menghadapi risiko beliau akan dikenakan tindakan tatatertib kerana salah laku. Di dalam kes ini, perayu telah secara tersirat menyatakan bahawa penentang telah melibatkan diri di dalam penyogokan ketua eksekutif kerajaan negeri, tetapi tidak terdapat keterangan yang bebas untuk menyokong pengataan ini.

**Obiter:**

Jika penentang telah memfailkan suatu rayuan balas terhadap perintah hakim yang memberikan kebenaran tak bersyarat kepada perayu untuk membela dirinya terhadap jumlah RM100,000 tersebut, mahkamah ini mungkin mencatatkan penghakiman muktamad untuk jumlah tersebut. Ini adalah kerana perayu telah gagal membuat suatu jawapan yang cepat dan bersungguh-sungguh terhadap surat penentang yang bertarikh 17 Disember 1991, untuk menafikan perjanjian mengenai fee tambahan tersebut, seperti yang seharusnya dilakukan oleh beliau.]

[*Editorial Note*: The appellant has appealed to the Federal Court vide Civil Appeal No 02–9–95.]

**Notes**

For cases on consideration in contracts, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1358–1380.

A For cases on illegality of contracts, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1733–1810.

**Cases referred to**

*Koh Siak Poo v Perkayuan OKS Sdn Bhd & Ors* [1989] 3 MLJ 164 (refd)

B *Lampleigh v Brathwait* (1615) Hob 105 (folld)

*Tan Cheng Hock v Chan Thean Soo & Anor* [1987] 2 MLJ 479 (folld)

**Legislation referred to**

Contracts Act 1950 s 2(d), (e)

C

**Appeal from**: Civil Appeal No S3–22–123–93 (High Court, Kuala Lumpur)

*PM Mahalingam* (*PM Mahalingam & Co*) for the appellant.

D *Benjamin Yean* (*Chew Chang Min* with him) (*Liza Chan & Co*) for the respondent.

*Cur Adv Vult*

**Gopal Sri Ram JCA** (delivering the judgment of the court): This is an E appeal against the order of the High Court at Kuala Lumpur made upon the respondent's summons for judgment. In his writ, the respondent claimed the sum of RM268,888 against the appellant. The learned judge entered judgment against the appellant for the sum of RM168,888 but gave him unconditional leave to defend in respect of the balance. There is no cross-appeal by the respondent against this latter order. The factual F background to this case may be briefly stated.

The appellant is one of the shareholders of a private limited company known as Wealth Sdn Bhd ('the company'). He is also one of its directors. The company was at all material times the registered proprietor of three lots of land in the Mukim of Kajang. The land in question adjoins a rather G prestigious housing development known as 'Country Heights'. At the time the company acquired the land, it was classified as an agricultural land. The company intended to develop it. There was therefore a need to convert its use from agricultural to housing and to have it sub-divided. There was also a problem of access from the land in question through Country Heights. It is common ground that the appellant considered the H gaining of this right of way to the land as a matter of importance as it would have the effect of enhancing the land's value. The company accordingly engaged a firm of surveyors to prepare the necessary documents for submission to the appropriate authority for conversion and sub-division. The surveyors, having completed the necessary documentation, submitted I the same to the office of the land administrator in and for the district of Ulu Langat on 26 January 1991, for consideration.

At about this time, the appellant was introduced to the respondent and sought his assistance in connection with the conversion and sub-division. According to the appellant, the respondent told him that he knew

the Menteri Besar for the State of Selangor and other senior state government officers and that he was prepared to assist in the matter. He expected to be paid for his services. He asked for a fee of RM268,888. It is not disputed that the appellant, in his personal capacity, agreed to pay this fee if the respondent would assist in obtaining speedy approval from the state authority of the company's application for conversion and sub-division.

On 28 January 1991, a letter was written to the Menteri Besar. The company's letterhead was used. It bore the signature of the respondent who was designated 'Project Manager'. It is obvious that this letterhead was furnished by the appellant to the respondent to enable the latter to make representations on the company's behalf. The letter referred to the company's application for conversion and sub-division. It asked for assistance from the Menteri Besar for an early approval of the application.

Sometime later, the respondent produced this very letter to the appellant. Across a space atop the letter, there appears a handwritten note addressed to the land administrator for the district of Ulu Langat. It reads 'Disokong'. There is a signature below the notation. The appellant does not dispute that it is indeed the signature of the Menteri Besar. Having seen this letter, the appellant paid RM100,000 to the respondent. It is common ground that the respondent did not give any receipt for this sum. Counsel for the appellant, during his argument before us, repeatedly complained of this. But the appellant and his solicitors have been absolutely frank and honest about it. They have acknowledged, in the statement of claim, the receipt of this sum. So the complaint by counsel in respect of this comes to naught.

The undisputed documentary evidence shows that the standing committee approved the company's application on 22 July 1992, and that the State Executive Council gave its approval on 12 August 1992. By a letter dated 16 September 1992, the land administrator for the district of Ulu Langat informed the company that its application had been approved. It appears that by this stage, the all-important question of the access had not been addressed by either the company or the appellant. The evidence shows that that came later.

On 17 December 1991, the respondent wrote to the appellant confirming an agreement between them whereby the former was to receive an additional fee of RM100,000 if he assisted in resolving the problem regarding the access. It is the respondent's case that he did in fact obtain the required access through his exertions. The appellant, however, denies any agreement to pay the additional fee. In respect of this sum, the learned judge granted leave to defend. We would digress for a moment to say a few words about this latter order of the learned judge.

During argument, we registered our surprise at the learned judge's reluctance to enter judgment for this sum of RM100,000. After all, the appellant had failed to respond to the letter of 17 December 1991. If there had never been an agreement as alleged, it is reasonable to expect a prompt and vigorous denial. But, as we have pointed out, there was no response whatsoever from the appellant.

In this context, we recall to mind the following passage in the judgment of Edgar Joseph Jr J in *Tan Cheng Hock v Chan Thean Soo* [1987] 2 MLJ 479 at p 487:

> In *Wiedemann v Walpole* [1891] 2 QB 534 at p 537, an action for breach of promise of marriage, it was held, that the mere fact that the defendant did not answer letters written to him by the plaintiff in which she stated that he had promised to marry her, was no evidence corroborating the plaintiff's testimony in support of such promise.
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> Lord Esher MR, in his judgment, remarked, 'Here, we have only to see whether *the mere fact* of not answering the letters, *with nothing else* for us to consider is any evidence in corroboration of the promise'. (Emphasis supplied.) Earlier, in his judgment, he said, '*Now there are cases ... business and mercantile cases in which the courts have taken notice that, in the ordinary course of business, if one man of business states in a letter to another that he has agreed to do certain things, the person who receives that letter must answer it if he means to dispute the fact that he did so agree*'. (Emphasis added.)

But there was no cross-appeal by the respondent against the order of the learned judge granting unconditional leave to the appellant to defend in respect of the sum of RM100,000. This is because the respondent unreservedly accepted the view expressed by the learned judge during the argument in support of the order that he proposed to make. Had there been such a cross-appeal, we *may* well have been minded to reverse the learned judge and to enter final judgment for this remaining sum.

The note taken by the learned judge of the arguments addressed to him reflect the defences taken by the appellant to the respondent's claim. It reads as follows:

> *Mr Mahalingam*
>
> With regard to the RM268,888 claim, our defences are as follow:
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> (i) the plaintiff told the defendant that he knew the Menteri Besar of Selangor, some exco members and some government officers and he was promised that he could expedite the conversion of the property. That would be illegal under ss 24 and 25 of the Contracts Act 1950;
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> (ii) he did nothing, therefore there was no consideration;
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> (iii) they took this big sum of money and did nothing; and
>
> (iv) time was of the essence. He said he would do it within one year but conversion was done more than a year.

The learned judge rejected, and in our view rightly so, all the foregoing defences and held each of them not to amount to bona fide triable issues. Before us, counsel for the appellant reagitated only issues (i), (ii) and (iii). He did not pursue the argument that time was of the essence of the agreement. Since the learned judge delivered no written reasons for his decision, and this appeal being in the nature of a rehearing (see *Koh Siak Poo v Perkayuan OKS Sdn Bhd & Ors* [1989] 3 MLJ 164), it is incumbent for us to deal with the issues raised before us by the appellant.

It is convenient for us to take the second and third points first. They have to do with the question of consideration. The appellant argued that there was no consideration for the agreement between the parties. The judge held there was. In our view, the learned judge was right.

The argument based on absence of consideration, in our view, overlooks the fundamental principles governing this area of the law of contract. The facts relevant to the point are these. There was the promise made by the respondent that he would assist in obtaining the required approval for conversion and sub-division of the company's land. The appellant in turn promised, and this is common ground, that he would pay the respondent RM268,888 for that service. One therefore has in the present case, ab initio, a promise in exchange for a promise. In our judgment, this is good consideration in law. We shall explain momentarily why we hold this opinion.

Now, it is well settled that consideration may be executory or executed. If A agrees to mow B's lawn for RM10 and B agrees to pay him RM10 in exchange for this service, there is, in the eyes of the law, a valid and binding agreement between A and B. This is borne out by the words of s 2(e) of the Contracts Act 1950 which declares: 'every promise and every set of promises, forming the consideration for each other, is an agreement.'

The consideration in such a case is said to be executory, namely, the exchange of the mutual promises. When the lawn is mowed, the act promised has been done and the consideration is said to have become executed. It is not and has never been the law of this country that to support an agreement, consideration must always be executed. Executory consideration suffices. Of course, A's right to sue for the RM10 may not arise until he has performed his part of the bargain or has been prevented by B from performing it.

The illustration we have given and the principle we have stated are so elementary that they may be found in any standard work upon the subject. But we have been compelled to do so because a reading of the judge's note of the proceedings in the court below has left us with the distinct impression that these elementary propositions may have been misunderstood by the appellant and by the court.

The submission that the respondent did nothing to earn his fee is equally unmeritorious. To recall, upon the facts in respect of which the appellant raises no dispute, the respondent did expend his exertions in securing the Menteri Besar's support for the company's application. The approval, much sought after by the appellant and the company, was obtained. In the words of counsel for the appellant when he addressed us on this point, 'the respondent delivered the goods'. In the light of this telling concession, it is an amazement that the appellant is able to submit that the respondent did nothing to earn his fee.

The actions of the respondent come well within the terms of s 2(d) of the Contracts Act 1950 which reads as follows:

> when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

The position of the respondent before us is, at the very least, not dissimilar from that of the successful plaintiff in *Lampleigh v Brathwait* (1615) Hob

A 105, who, in order to obtain a pardon for the defendant, Brathwait, at the latter's request, exerted himself 'riding and journeying to and from London and Newmarket' at his own expense. Brathwait later promised to pay him £100 for his trouble, but failed to do so. Lampleigh sued in assumpsit and succeeded on the ground that his services had been rendered at the previous request. If Lampleigh could recover for his exertions, it is a little
B difficult to understand why the instant respondent should not.

We now turn to consider the submission that the agreement is void for illegality. The gist of the appellant's submission on this point is twofold. First, it is said that he was deceived into believing that approval would be granted when in fact it had already been granted. Second, it is submitted
C that the money paid to the respondent and what remains due to him were in fact a bribe to corruptly obtain from the Menteri Besar and other state officials their support for the company's application.

We take the allegation of cheating, the term employed by counsel before us, first. The factual chronology upon which Encik Mahalingam
D relies in support of this allegation does not assist the appellant. This is not a case where by means of a false representation, the respondent obtained a pecuniary advantage from the appellant or even the company. He was asked to help. He agreed, but asked for a fee. He did deliver the goods and received part payment. So one may well be justified in asking: where is the cheating or deception? Add to this the fact that in one of his affidavits the
E appellant alleged that the handwritten note appearing in the letter of 28 January 1991 was false and was not even that of the Menteri Besar, an allegation that was as speedily withdrawn as it was made. This leads us to form the view that the appellant is a man who is prepared to make unfounded allegations at the drop of a hat.

F We now turn to the charge of bribery. This is a most serious allegation in which is housed the implication that the appellant was a person who was prepared to indulge in the bribery of public officials in order to achieve his purpose. Now let us say at once that there is not an iota of independent evidence to support this charge. It does not find mention in the appellant's
G first affidavit delivered in opposition to the respondent's summons for judgment.

The appellant did not lodge a contemporaneous police report complaining about the demand for a bribe. Indeed, he only lodged a police report during an adjournment in the proceedings and annexed it to an affidavit of his, delivered well after the hearing of the respondent's summons
H had commenced. This act of the appellant was prompted, no doubt, by the observation by the learned judge during the hearing that no report had been lodged at the material time. The failure of the appellant to lodge a contemporaneous police report led the learned judge to make the following remark which appears in the note of the proceedings recorded by him:

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> The fact that you are prepared to lodge a report only after I have pointed it out to you that it should have been done immediately, will go to show that the tale that your client has told is far-fetched. If it is true, he would have reported it to the police at once without paying the bribe. If he has paid the bribe, he has committed an offence. If that is so, it is my duty to send the

papers to the Public Prosecutor. If you raise this defence, then you must have admitted to corruption.

Later, after the court resumed the hearing, counsel informed the learned judge that a report had been lodged during the adjournment. This led to the following exchange between the judge and counsel:

Mr Mahalingam: My client has lodged a report just now.

Chan J: You have missed the point. What I have told you before the lunch break is that your client has admitted to me just now through you that he has committed a criminal offence in that he had paid over a sum of money for the purpose of bribery. I then adjourned the matter for you to think it over and to be careful of what you say. So by what you have just told us, you are still insisting that the defence is that your client was a party to a crime. This leaves me with no choice but to adjourn the matter so that I can take the necessary steps to inform the police.

Adjourned to Monday (4 October 1993).

The affidavit exhibiting the police report came on file on 6 October 1993.

We entirely agree with the approach of the learned judge to the weight to be given to the failure of the appellant to timeously lodge a report with the police. Further, an examination of the conduct of the appellant after the commencement of the litigation, his failure to raise this matter at the earliest opportunity in his first affidavit, and producing it, as a conjurer does, like a rabbit out of a hat, leaves us in no doubt, as it did the learned judge, that the tale was an afterthought, the machinations of a desperate litigant trying every trick in the book to escape judgment being entered against him.

We would add that the charge of bribery, even when made in civil proceedings, is a serious charge. It is akin to a charge of fraud, or a plea of justification in a libel action. It should not be lightly taken in the absence of convincing evidence in the hands of the advocate having conduct of the cause. A solicitor who makes such a charge without foundation faces the risk of being disciplined for misconduct. And one must not overlook the fact that the charge in this case has been levelled against an elected official, the chief executive of a state government.

The appellant was not able to demonstrate to us that the learned judge had erred in any way. This is not a case where a bona fide triable issue has been raised. Indeed, the appellant's conduct leaves us in no doubt that the issues raised are in truth mala fide. Convinced as we were of the lack of any merits in the appeal, we dismissed it without calling upon counsel for the respondent to reply. The orders made by the judge in the court below were affirmed and the respondent was awarded the costs of this appeal, towards the account of which the deposit paid into court by the appellant was directed to be paid to the respondent.

*Order accordingly.*

Reported by Isabel Liong